

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
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- v -	:	
	:	07 Cr. 913 (KMK)
PHILIP ETKIN,	:	
	:	
Defendant.	:	
	:	
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STATE OF NEW YORK	)	
COUNTY OF ORANGE	: ss.:	
SOUTHERN DISTRICT OF NEW YORK	)	

VINCENT PRESUTTI, pursuant to Title 28, United States Code, Section 1746,  
hereby declares:

1. I am employed as a Special Agent with the Federal Bureau of Investigation (“FBI”) and am the case agent for the investigation and prosecution of Philip Etkin.
2. Previously, New York State Police Staff Inspector Mark Smith provided me with an email documenting the New York State Police computers to which Etkin had access and the notices that would appear when Etkin would “start up” or “boot up” each computer. That email was attached as Exhibit B to the Government’s response to Etkin’s motion.
3. Inspector Smith has since provided me with photographs of the warnings that appeared: (a) on the laptop assigned to Etkin from March 2, 2007 to the end of his tenure on the New York State Police task force – coinciding with his arrest by the FBI – in or about late September 2007; and (b) on a desktop computer – to which Etkin had access – located in a supervisor’s office.
4. The receipt for the laptop that Etkin was assigned on March 2, 2007 by the

New York State Police is attached as Exhibit A to this Affidavit.

5. Exhibit B to this Affidavit are three photographs taken by the New York State Police of the laptop assigned to Etkin on March 2, 2007. Inspector Smith has told me that one of the photographs is of the warning that would appear when Etkin would start up the computer – and it is the warning that would have appeared on March 13, 2007. The warning – as it appears on the computer screen – ends mid sentence stating: “Your access may . . . .”

Previously, the New York State Police had informed me that this notice stated:

For authorized use only. The system and all data are the property of the New York State Police. Unauthorized use or attempted unauthorized use of this system by persons not issued a user account is not permitted and may constitute a state or federal offense. Use of this system is only permitted under the authority of the New York State Police and subject to policies, procedures and acceptable use as outlined in the NYSP Administrative Manual Section 11Q and the NYSP Civilian Employee Manual section 12D. Any use of the NYSP computer system constitutes express consent for the authorized personnel to monitor, intercept, record, read, copy, access and capture such information for use or disclosure without additional prior notice. Users have no legitimate expectation of privacy during any use of this system or in any data on this system. Your access may be logged at any time. By logging into this system, you are agreeing that you have read, and accepted the above terms and conditions.

(Exhibit B to Government’s January 7, 2008 Memorandum of Law).

6. Inspector Smith has informed me that in order to read the portion of the notice which states: “may be logged at any time. By logging into this system, you are agreeing that you have read, and accepted the above terms and conditions,” the user would have to “click” on the text field in which the warning appears and manually scroll down with the arrow keys. By scrolling down with the arrow keys, the user can read the rest of the warning. Exhibit C contains two photographs of how the warning appears on Etkin’s laptop after a user

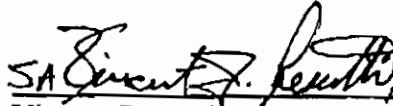
has scrolled down with the arrow keys to the end of the warning. Exhibit C also contains a photograph of the bottom of Etkin's laptop.

7. Inspector Smith also informed me that in order to proceed past the warning that appeared on Etkin's laptop, the user would have to "click" on the portion of the screen that says "OK" or hit the "Enter" key on the keyboard. After doing so, a screen appears where the user is prompted to enter a user name and password. Inspector Smith has informed me that – on Etkin's laptop – the user does not have to click on the text field and manually scroll down to read the entire warning in order to proceed to the screen where the user is prompted to enter a user name and password. The user could click "OK" or hit the "Enter" key when the portion of the warning shown in the photograph that is part of Exhibit A appears on the screen and proceed to the next screen asking for the user name and password.

8. Exhibit D to this Affidavit are three photographs taken by the New York State Police of a desktop computer – to which Etkin had access – located in a supervisor's office. Inspector Smith informed me that: (a) one of the photographs is of the warning – as it would have appeared on March 13, 2007 – that would appear when Etkin or any other user would start up the computer; and (b) in order to proceed past the warning that appeared on this desktop computer, the user would have to click on the portion of the screen that says "OK" or hit the "Enter" key on the keyboard. After doing so, a screen appears where the user is prompted to enter a user name and password.

9. I declare under penalty of perjury that the foregoing is true and correct,  
pursuant to Title 28, United States Code, Section 1746.

Dated: Goshen, New York  
January 17, 2008

  
SA Vincent Presutti, FBI, NY, 1-17-08  
Vincent Presutti  
Special Agent  
Federal Bureau of Investigation

AFFIRMATION OF SERVICE

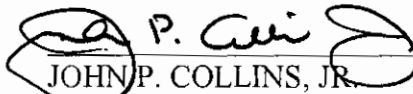
JOHN P. COLLINS, JR., pursuant to Title 28, United States Code, Section 1746, hereby declares under penalty of perjury that:

On January 17, 2008, I served one copy of the within – January 17, 2008 Affidavit of Vincent Presutti – by causing the same to be enclosed in a Federal Express envelope addressed to:

Kerry A. Lawrence, Esq.  
Briccetti, Calhoun & Lawrence, LLP  
81 Main Street, Suite 450  
White Plains, NY 10601

and causing the envelope to be placed in the outgoing mail for Federal Express delivery from 300 Quaroppas Street, White Plains, New York 10601.

Executed on January 17, 2008, at White Plains, New York.

  
JOHN P. COLLINS, JR.  
Assistant United States Attorney  
Tel. No.: (914) 993-1919